

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MICHAEL TEREL JONES,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,
et al.,

Defendants.

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Case No. 3:04cv373

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE (DOC. #22) IN THEIR
ENTIRETY; PLAINTIFF'S OBJECTIONS TO SAID JUDICIAL FILING (DOC.
#24) OVERRULED; DEFENDANT UNION'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT, PURSUANT TO FED. R. CIV. P. 12(b)(6),
DECLARED MOOT IN PART AND SUSTAINED IN PART; BRIEF
REASONING SET FORTH; CAPTIONED CAUSE REMAINS WITH UNITED
STATES MAGISTRATE JUDGE

Based upon the reasoning and citations of authority set forth in the Report and Recommendations of the United States Magistrate Judge (Doc. #22), on the subject of the Motion of the Defendant Union to Dismiss Counts Seven, Eight and Nine in Plaintiff's Complaint (Doc. #8), as well as upon a thorough *de novo* review of the entirety of this Court's file and the applicable law, this Court adopts said Report and Recommendations in their entirety. The Defendant Union's Motion to Dismiss (Doc. #8) is overruled as moot, with regard to the Plaintiff's seventh and

eighth causes of action (said Plaintiff having acknowledged that said claims for relief were not directed against the Defendant Union) and sustained as to the ninth claim for relief. Plaintiff contends that, in reality, he is alleging a claim for breach of the duty of fair representation against the Union, in the ninth claim for relief, rather than one for wrongful discharge. The Court notes that the Plaintiff's *pro se* Complaint purports to, and does, set forth a claim of the breach of the duty of fair representation against the Defendant Union (third claim for relief), which is broad enough to encompass what the Plaintiff styles as his wrongful discharge. Accordingly, the Defendant Union's Motion to Dismiss (Doc. #8) is declared moot with respect to the seventh and eighth claims for relief and is sustained with regard to the ninth such. The Plaintiff's Objections to the Magistrate Judge's Report and Recommendations (Doc. #24) are overruled.

The captioned cause is ordered returned to the United States Magistrate Judge for further procedures.

/s/ Walter Herbert Rice

September 28, 2005

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

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WHR/slc